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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK TIMES COMPANY and
CHARLIE SAVAGE,

Plaintiffs,

v.

DEPARTMENT OF JUSTICE,

Defendant.

18 Civ. 7097 (ALC)

ANSWER

Defendant United States Department of Justice, by its attorney, Geoffrey S. Berman, United States Attorney for the Southern District of New York, hereby answers the complaint (Dkt. No. 1) of Plaintiffs The New York Times Company and Charlie Savage (together, “Plaintiffs”) on information and belief as follows:

1. Paragraph 1 of the complaint consists of Plaintiffs’ characterization of this action, to which no response is required. To the extent a response is deemed required, Defendant denies the allegations in Paragraph 1, except admits that Plaintiffs submitted a Freedom of Information Act (“FOIA”) request to Defendant.

PARTIES¹

2. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 2 of the complaint.

3. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 3 of the complaint.

4. Denies the allegations in Paragraph 4 of the complaint, except admits and avers that Defendant is a department of the executive branch of the federal government.

JURISDICTION AND VENUE

5. Paragraph 5 sets forth legal conclusions regarding jurisdiction, to which no response is required.

6. Paragraph 6 sets forth legal conclusions regarding venue, to which no response is required.

7. Paragraph 7 sets forth legal conclusions, to which no response is required. To the extent a response is deemed required, Defendant admits that it received Plaintiffs' FOIA request, dated June 1, 2018, and respectfully refers the Court to that request for a complete and accurate description of its contents. Avers that Defendant's efforts in response to Plaintiffs' June 1, 2018, FOIA request are ongoing.

FACTS

8. Admits that Defendant received Plaintiffs' June 1, 2018, FOIA request, No. 18-135, on June 1, 2018, and respectfully refers the Court to that request for a complete and accurate description of its contents.

¹ Defendant replicates the headings from Plaintiffs' complaint solely for ease of reference, without admitting any allegations set forth thereunder.

9. Admits that Defendant sent Plaintiffs a letter on or about July 27, 2018, and respectfully refers the Court to that letter for a complete and accurate description of its contents.

10. Paragraph 10 sets forth legal conclusions, to which no response is required. To the extent a response is deemed required, Defendant denies the allegations in Paragraph 10 and avers that Defendant's efforts in response to Plaintiffs' June 1, 2018, FOIA request are ongoing.

COUNT

11. Defendant realleges and incorporates its answers to Paragraphs 1 through 10 as though fully set forth herein.

12. Paragraph 12 sets forth legal conclusions, to which no response is required.

13. Paragraph 13 sets forth legal conclusions, to which no response is required. To the extent a response is deemed required, Defendant denies the allegations set forth in Paragraph 13, and avers that Defendant's efforts in response to Plaintiffs' June 1, 2018, FOIA request are ongoing.

14. Paragraph 14 sets forth legal conclusions, to which no response is required. To the extent a response is deemed required, Defendant denies the allegations set forth in Paragraph 14.

15. Paragraph 15 sets forth legal conclusions, to which no response is required. To the extent a response is deemed required, Defendant denies the allegations set forth in Paragraph 15.

REQUEST FOR RELIEF

The remainder of the complaint sets forth Plaintiffs' requested relief, to which no response is required. To the extent a response is required, Defendant denies that Plaintiffs are entitled to the relief sought, or to any relief whatsoever from Defendant.

* * *

Except to the extent explicitly admitted or qualified above, Defendant denies each and every allegation of the complaint. Defendant further denies that Plaintiffs are entitled to any relief whatsoever.

DEFENSES

FIRST DEFENSE

Plaintiffs fail to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiffs are not entitled to compel the production of records protected from disclosure by any applicable FOIA exemption or exclusion, *see* 5 U.S.C. § 552(b).

THIRD DEFENSE

The Court lacks subject matter jurisdiction over Plaintiffs' requests for relief that exceed the relief authorized under FOIA, 5 U.S.C. § 552.

FOURTH DEFENSE

Defendant is exercising due diligence in processing Plaintiffs' FOIA request and acting in good faith, with justification, and pursuant to authority, and exceptional circumstances exist that necessitate additional time for Defendant to process Plaintiffs' FOIA request.

* * *

Defendant may have additional defenses that are presently unknown but may be ascertained at a later time. Defendant reserves the right to assert each and every affirmative or other defense that may be available, including any defenses available pursuant to Federal Rules of Civil Procedure 8 and 12.

WHEREFORE, Defendant respectfully requests that the Court: (1) dismiss the complaint with prejudice; (2) enter judgment in favor of Defendant; and (3) grant such further relief as the Court deems just and proper, including costs and disbursements.

Date: New York, New York
September 10, 2018

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